87-1347 (1)

Supreme Court, U.S.
FILED
FEB 2 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88 -

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1987

LeROY S. ZIMMERMAN, et al.,
Petitioners

v.

PARA-PROFESSIONAL LAW CLINIC, et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Does the Constitution require a state prison to provide inmates with both an adequate law library and an organized inmate assistance association in order to meet the requirement of access to courts?

LIST OF PARTIES

PETITIONERS

LeROY S. ZIMMERMAN, Attorney General of the Commonwealth of Pennsylvania

DAVID S. OWENS, JR., Commissioner of Corrections of the Commonwealth of Pennsylvania

CHARLES ZIMMERMAN, Superintendent of Graterford Prison

THOMAS STACHELEK, Deputy Superintendent of Graterford Prison

RESPONDENTS

PARA-PROFESSIONAL LAW CLINIC

GEORGE BRADLEY, #F-0281

CURTIS EL JARVIS, #F-6690

MONSERATE ZAPATA, #F-0430

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CARL MILES, #F-7808

ZEBBIE CLIFTON, #F-5043

HAROLD X. SMITH, #F-6433

ON BEHALF OF ALL OTHER INMATES OF THE GRATERFORD INSTITUTION SIMILARLY SITUATED

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NO. 88 -

IN THE SUPREME COURT OF THE
UNITED STATES

FEBRUARY TERM, 1988

ROBERT P. KANE, et al.,

Petitioners

v.

PARA-PROFESSIONAL LAW CLINIC, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petitioners, officials of the Pennsylvania Department of Corrections, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The order of the Court of Appeals affirming the judgment of the district court has not been reported but may be found in the appendix at 1a.

The opinion of the district court is reported at 656 F.Supp. 1099 (E.D. Pa. 1987) and may be found in the appendix at 3a.

STATEMENT OF JURISDICTION

The decision of the Court of Appeals was issued on November 4, 1987 (2a). This petition for a writ of certiorari has been filed within ninety days of that date. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, Sec. 1.

STATUTE INVOLVED

The Civil Rights Act of 1871, c.21, §1, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this Section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1983.

STATEMENT OF THE CASE

This civil rights action was begun in 1978 by several state prison inmates who sought to enjoin the Attorney General of the Commonwealth of Pennsylvania[1] and officials of the Pennsylvania Bureau of Corrections[2] from closing or otherwise interfering with the functions of the so-called "Para-Professional Law Clinic, Inc." [PPLC hereafter], an inmate organization formed for the purpose of providing legal advice to inmates at the State Correctional Institution at Graterford,

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[1]At the time the action was initiated, Robert P. Kane was Attorney General of Pennsylvania. Since then, several other individuals have held the position.

[2]The Pennsylvania Bureau of Corrections is now the Pennsylvania Department of Corrections.

Pennsylvania [Graterford], and subsidized by the Commonwealth of Pennsylvania through inmate salaries, office supplies and office space. (3a, 13a, 16a)

After several evidentiary hearings, the district court permanently enjoined the Commonwealth officials from closing any office or facility of the PPLC. (48a)

The district court held that, although the prison law library at Graterford is constitutionally adequate (21a), it fails to provide "meaningful access" to courts to two classes of inmates: (1) those confined to the prison's restricted housing units for disciplinary and administrative reasons, and (2) inmates who are illiterate or non-English speaking. Because inmates confined to restricted housing for disciplinary and administrative reasons

do not have the opportunity to visit the law library personally and must, instead, request legal materials, the district court concluded that their constitutionally protected right of access to court would be abridged if they did not have access to PPLC inmates who can assist them with their legal problems. Similarly, the district court reasoned that a law library, although adequate, is of little use to someone who is functionally illiterate or who does not speak English. (21a, 22a, 45a)

On appeal, the United States Court of Appeals for the Third Circuit affirmed the judgment of the district court for the reasons advanced in the district court's opinion. (2a)

Pursuant to this Court's command in Bounds v. Smith, 430 U.S. 817 (1976), the Graterford prison provides an adequate law library for its inmate

population. The law library is open five days a week for a total of 7 1/4 hours a day. The inmate staff consists of six legal reference aides, one of whom is fluent in English and Spanish. While reference aides are not permitted to do legal work for other inmates during working hours, their role is to help inmates research a legal issue by finding the appropriate volume and showing inmates how to use the law books. (6a-8a)

Inmates in general population gain access to the law library by requesting a pass from their block officer. There are no limitations on obtaining such a pass; the inmate need only request it. Inmates housed in close custody in the restricted units[3] gain access to legal

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[3]Restricted housing accomodates a total of 160 inmates; 40 of these are housed in the Restricted Housing Unit while 120 are housed on E Gallery. (10a)

materials by submitting to the librarian a request slip for a case, a book, or a topic they wish to have researched. The inmate reference aides research the topic, and requests are filled in two or three days. These close custody inmates may request a reasonable number of books -- three or four -- each time they submit a request. (9a-10a)

Inmates at Graterford are not barred from seeking or furnishing legal assistance to one another. An inmate in general population may seek the assistance of any other inmate to help him with his legal problems. (18a) Inmates confined on E Gallery have a daily two hour recreation period when they can confer with each other.

The PPLC, staffed by 16 to 20 inmates, presently occupies five cells, one on each cell block. In addition, it

occupies two other offices, one is approximately 700 square feet and another, located off the institution's main corridor, is approximately the same size of two cells. The Commonwealth pays between $520 and $820 per month in salaries to the members of the PPLC and provides approximately $500 a year in office supplies. (16a)

Aside from the members of the PPLC, Graterford has in its population approximately 25 to 30 well-known "jailhouse lawyers". (18a) Moreover, a counselor is available to any illiterate inmate at Graterford to help him contact his attorney or the courts. For the Hispanic inmate, Graterford has available a Spanish-speaking counselor and a Spanish-speaking law library aide. (7a, 12a)

Graterford inmates, tested several years ago for the purpose of educational placement, averaged a 7.3 grade level when tested in the areas of reading, spelling and arithmetic. A more recent study of a sample of 200 Graterford inmates shows that the average reading level for these individuals was at grade 6.4. Out of a total population of 2000, approximately 300 to 325 inmates at Graterford are illiterate. Approximately one-third of the 168 Hispanic inmates at Graterford are literate in English. Since 1981, the prison has provided a one-to-one tutoring program teaching English as a second language. Institutional services for illiterate inmates at Graterford also include a program of adult basic education leading to a high school equivalency diploma. (11a-12a)

Like many prisons across the country, Graterford is overcrowded, forcing prison administrators to double-cell several hundred inmates. Double celling presents security concerns for prison officials; due to space limitations, the prison is unable to adequately store and safeguard inmate property. (19a-20a) This Court is well aware of the severe security problems which overcrowded conditions generate, threatening the life and property of both inmates and staff. At Graterford, cells and office space occupied by the PPLC are needed to alleviate overcrowding and property storage problems. (19a-20a)

REASONS FOR GRANTING THE WRIT

1. The Petition Should Be Granted To Resolve The Apparent Confusion Among The Circuits Regarding The Contours And Limits Of Inmates' Right of Access To Courts.

In Bounds v. Smith, 430 U.S. 817 (1976), the Court held that:

> ...[T]he fundamental right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

430 U.S. at 828, (emphasis added).

This holding, embodying the standard which defines the state's affirmative obligation to assure prisoners access to courts, has been misinterpreted and

extended inappropriately by the Court of Appeals for the Third Circuit to require both a law library and organized legal assistance by inmates.

Relying on dicta in Cruz v. Hauck, 627 F.2d 710, 720-21 (5th Cir. 1980), and on Williams v. Leeks, 584 F.2d 1336, 1339 (4th Cir.), cert. denied, 442 U.S. 911 (1979), the district court reasoned that a law library alone cannot provide "meaningful access" to illiterate inmates and to those whose custodial status does not give them personal access to the law library. In adopting the rationale and decision of the district court, the Court of Appeals has extended the reach of the Bounds holding beyond its analytical limits and imposed an institutional duty on the state which surpasses any constitutional requirements.

While the Court in Bounds did not read the right of access in a wholly

mechanical fashion, it was firm in its conclusion that the right was met with an adequate law library alone. The Court recognized that, like other inmates' rights, the right of access is not absolute.

The decision of the Third Circuit is in conflict with at least four other circuits which have had the opportunity to consider the contours of the right of access as described in Bounds. These circuits have held uniformly that states are not required to provide trained legal assistance if inmates have access to an adequate law library.[4]

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[4]Campbell v. Miller, 787 F.2d 217 (7th Cir.) cert. denied, 107 S.Ct. 673 (1986); Hooks v. Wainwright, 775 F.2d 1433 (11th Cir.) cert. denied, 107 S.Ct. 313 (1986); Lindquist v. Idaho State Board of Corrections, 776 F.2d 851 (9th Cir. 1985); Cepulonis v. Fair, 732 F.2d 1 (1st Cir. 1984).

For example, in Hooks v. Wainright, 775 F.2d 1433 (11th Cir.), cert. denied, 107 S.Ct. 313 (1986), the court reversed, as contrary to the holding in Bounds, a district court decision that, because half of Florida's inmates are functionally illiterate, any acceptable plan for insuring meaningful access to the courts must include a provision for assistance of counsel.

The Eleventh Circuit pointed out that the problem with the district court's decision is that:

> ... it reads too expansively the words used by the Supreme Court: "meaningful access". Although it may take more decisions to ascertain exactly what the Supreme Court will decide is constitutionally required to assure "meaningful access", we know from the Bounds holding that the Supreme Court does not presently interpret those words to require the mandatory provisions of legal services.

775 F.2d at 1435.

Viewed in the context of prior cases dealing with access to courts, the Hooks court found that Bounds simply intended to place prisoners in the same position as non-prisoners:

> All of these decisions simply removed barriers to court access that imprisonment or indigency erected. They in effect tended to place prisoners in the same position as non-prisoners and indigent prisoners in the same position as non-indigent prisoners. Having held that inmates can represent themselves, if able to do so, and can help other inmates who are not so able, it was but a small step to hold that such able inmates who presumably would have access to libraries but for imprisonment, must be given access to libraries in prison, or access to people who have access to libraries. This is a far cry from constitutionally requiring the state to provide legal counsel for the

> imprisoned, not available as a matter of constitutional right to the unimprisoned in civil cases.

Id. at 1436-37.

A similar rationale was endorsed by the Seventh Circuit where that court held that an adequate library satisfies the constitutional requirements and the absence of an established program for trained legal assistance did not violate the prisoner's right of access to courts. Campbell v. Miller, 787 F.2d 217 (7th Cir.), cert. denied, 107 S.Ct. 673 (1986). There, an inmate complained that the combined effect of attorney visitation restrictions, limited access to the control unit law library, body cavity searches before and after law library use, exact paging system for requesting materials from the main

library, and the absence of an established legal assistance program combined to deprive him of access to the courts. In affirming the district court's holding, the Court of Appeals found that access to the law library was adequate, and concluded that no independent right to legal assistance exists:

> [Appellant] acknowledges that Bounds does not entitle him to such a program, provided library access is otherwise constitutionally adequate.... An inmate needs legal research or advice in order to make a meaningful initial presentation [of his claims] to a trial court.... Because of our holding that [appellant] has been afforded meaningful access to the law library and legal materials, the lack of trained legal assistance at Marion does not, standing alone or taken together with the restrictions mentioned above, unjustifiably impair his access to the courts.

787 F.2d at 229-230 (citations omitted).

In Lindquist v. Idaho State Board of Corrections, 776 F.2d 851 (9th Cir. 1985), the Ninth Circuit rejected the inmates' argument that a prison law library plan was constitutionally deficient because meaningful access can be achieved only by providing inmates with the assistance of an attorney. Likewise, in Cepulonis v. Fair, 732 F.2d 1 (1st Cir. 1984), the First Circuit reversed a district court that had required the state to provide inmates with a law library and legal assistance from second and third year law students. The Cepulonis court held that:

> Bounds, requires only "adequate law libraries or adequate assistance from persons trained in the law", not both. This is not to say that a court may never order a mixture of library

> access and lawyer or paralegal assistance: an insufficiency of library time might have to be supplemented by a certain amount of assistance. Moreover, in order to provide an "adequate law library" some library personnel might be required to keep books in order. But Bounds does not create an entitlement to legal aid assistance if library access is otherwise constitutionally adequate.

732 F.2d at 6 (emphasis in original).

In contrast to the reasoning of these several circuits, the Third Circuit's expansive interpretation of "meaningful access" represents a significant divergence from this Court's direction in Bounds and certainly justifies review at this time.

2. The Court Should Address The Important Constitutional Issues Raised By The Decision Of The Court Of Appeals -- A Decision Which Severely Curtails The Discretion Of Prison Officials And Imposes On The State Obligations Of Uncertain Textual Footing In The Constitution.

In the instant case, as in Bounds, the right of access to court is being delineated in the context of post-conviction and other civil claims.[5] This Court needs to examine this decision whose internal logic compels the conclusion that prisoners who seek to file civil suits are entitled to the assistance of counsel as a matter of constitutional right -- a right heretofore unavailable to their illiterate

[5]Post-conviction relief is not part of the criminal proceeding and is, in fact, civil in nature. Fay v. Noia, 372 U.S. 391, 423-24 (1963).

and indigent counterparts who are free citizens.[6] Such an absurd result does not conform with the body of American jurisprudence which traditionally has accorded men in free society a fuller enjoyment of constitutional rights than the imprisoned. Moreover, the decision of the Third Circuit impermissibly limits that discretion which this Court repeatedly has accorded prison administrators. Bell v. Wolfish, 441 U.S. 520 (1974).

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[6]As the Court of Appeals noted in Hooks v. Wainright, that state prisoners are not constitutionally entitled to have the state provide attorneys for them is most visibly manifested in the practice of both state and federal judicial systems that treat the application for appointed counsel for collateral and civil rights proceedings on a case-by-case basis. 775 F.2d at 1437.

By establishing an adequate law library at Graterford with a reasonable system of access to it by all inmates, the Commonwealth has fulfilled its obligation to provide inmates with access to courts as the right has been defined in Bounds. Consequently, the management of the day-to-day operation of an inmate organization should be returned to the prison officials. It is the prison administrators who should determine, after weighing relevant security and housekeeping factors, what office space the prison can afford to place at the disposal of the PPLC and what other services it will supply to this organization, if any.

The PPLC is usurping considerable resources at Graterford both in terms of much-needed space and in terms of financial expenditures. Graterford is overcrowded, compelling prison officials

to resort to double-celling inmates. The record shows that the PPLC occupies five cells and two offices, one of which is as large as the prison law library. Such space is desperately needed to house inmates and their property. In addition, each inmate who works in the PPLC receives wages [approximately $520 to $800 represents the monthly payroll] and the PPLC receives approximately $500.00 per year in office supplies. A court cannot impose such expenses on the state when an adequate prison law library exists and meets the constitutional mandate of this Court.

The prison officials here are entitled, in the absence of any demonstrated infringement on plaintiffs' right of access to the courts, to exercise their discretion in determining

whether limited economic resources should be utilized to subsidize the PPLC or whether this inmate organization should be eliminated in order to allocate such resources elsewhere.

Unquestionably, both the district court and the Court of Appeals have responded to the perceived needs of a vulnerable category of inmates; however, as this Court has pointed out consistently, the Constitution does not provide a cure for every social ill nor is the judiciary empowered to redress every social problem. Plyler v. Doe, 457 U.S. 202, 253 (1982). The Third Circuit's decision requires this Court to re-examine the constitutional bases for the right of access to courts and to define properly the contours of that right.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted and, upon review, the decision of the Court of Appeals should be reversed summarily.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 87-1193

(D.C. Civil 78-0538 - EASTERN DISTRICT OF PENNSYLVANIA)

UNITED STATES OF AMERICA EX REL.
PARA-PROFESSIONAL LAW CLINIC AND
BRADLEY, GEORGE #F-0281 AND
EL, JARVIS, CURTIS #F-6690 AND
ZAPATA, MONSERATE #F-0430 AND
WELLS, BEBLEY, C., JR. #F-0253 AND
MILES, CARL #F-7808 AND
CLIFTON, ZEBBIE #F-5043 AND
SMITH, HAROLD X. #F-6433 AND
ON BEHALF OF ALL OTHERS (INMATES)
OF THE GRATERFORD INSTITUTION
SIMILARLY SITUATED, ET AL.,
Appellees

v.

KANE, ROBERT P. ATTORNEY GENERAL
OF THE COMMONWEALTH OF PENNSYLVANIA
AND ROBINSON, WILLIAM B.,
COMMISSIONER OF CORRECTIONS OF
THE COMMONWEALTH OF PENNSYLVANIA
AND CUYLER, JULIUS T.,
SUPERINTENDENT OF GRATERFORD PRISON
AND SIMS, DANIEL T., DEPUTY
SUPERINTENDENT OF GRATERFORD
PRISON, ET AL.,
Appellants

BEFORE: HIGGINBOTHAM, SLOVITER,
and MARIS, Circuit Judges

ORDER

After consideration of all contentions raised by appellants, it is

ADJUDGED AND ORDERED that the judgment of the district court is affirmed for the reasons noted in Chief Judge Emeritus Joseph S. Lord's opinion.

Costs taxed against appellants.

BY THE COURT,

/S/ A. LEON HIGGINBOTHAM
CIRCUIT JUDGE

DATED: NOVEMBER 4, 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex rel. PARA-PROFESSIONAL LAW CLINIC, et al. : CIVIL ACTION

v. :

ROBERT P. KANE, et al. : NO. 78-538

OPINION

Lord, S.J. March 25, 1987

Background

On or about January 27, 1976, inmates at the State Correctional Institute at Graterford ("Graterford") formed the Para-Professional Law Clinic ("PPLC" or "Clinic") to provide legal assistance to Graterford inmates. In December 1977 the prison announced plans to close PPLC. Certain inmates moved for a preliminary injunction. After a two day hearing I found that closing

PPLC violated inmates' rights to obtain legal assistance from other inmates and, in the absence of an adequate law library, inmates' rights of access to the courts. I ordered that the Clinic be reopened. Wade v. Kane, 448 F. Supp. 678 (E.D. Pa. 1978). The Third Circuit affirmed. Wade v. Kane, 591 F.2d 1338 (3d Cir. 1979).

After I issued the preliminary injunction in Wade, another group of inmates filed a complaint, Para-Professional Law Clinic v. Kane, C.A. No. 78-538, raising the same issues addressed in Wade. These two actions were consolidated.

After settlement negotiations proved unsuccessful, a final hearing was held. None of the Wade plaintiffs remained incarcerated at Graterford, and that action was dismissed with prejudice.

I therefore have before me only C.A. No. 78-538. However, since this case and the Wade case were consolidated and would unquestionably have been tried together as one case, I considered the evidence presented in both cases rather than engage in the duplicative and unnecessary process of representing all the evidence taken in Wade. After careful review of the evidence presented at the original and final hearings, I make the following findings of fact and conclusions of law.

Findings of Fact

1. Graterford provides inmates an institution-run law library ("library"). At the time of the final hearing, the library contained up-to-date collections of United States

Supreme Court Reports, Federal Reporter, Federal Supplement, Pennsylvania Reporter (Atlantic Reporter, Second Series), selected federal and state statutes and Shepard's Federal Citations. The library also contained numerous research and reference aids.[1]

2. The library is open Monday thru Friday from 8:30 a.m. to approximately 11:20 a.m., 1:00 p.m. to approximately 3:20 p.m., and 6:30 p.m. to 8:30 p.m.

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[1]The library contains, inter alia, digests of state and federal law; legal dictionaries; L. Yackle, Post Conviction Remedies; J. Cook, Constitutional Rights of the Accused; E. Devitt & C. Blackmar, Federal Jury Practice and Instructions; W. Patton, Criminal Trial Manual for Pennsylvania; C. McCormick, McCormick's Handbook of the Law of Evidence; and portions of Moore's Federal Practice.

3. The library occupies approximately 700 square feet and can accommodate approximately twenty inmates. If more than twenty inmates wish to use the law library at any one time, they may work in the adjacent general library. The general library is open Monday thru Friday, from 8:30 a.m. to approximately 11:20 a.m., 1:00 p.m. to approximately 3:20 p.m.

4. The library employs six or seven inmates as legal reference aides ("aides").

5. All aides are scheduled to work at all times the library is open. However, on average only two or three aides are present at any particular time. At various times the library has employed a Spanish-speaking aide.

6. Aides (but not Clinic members) are not permitted to give inmates legal assistance or advice during working

hours, since this might diminish the number of inmates able to enlist the primary purpose of the aides, to locate citations and law books. Aides are permitted to assist inmates only by locating library materials and showing inmates how to use such materials.

7. Library aides are not required to have training in legal research; the only job qualification is an interest in working in the library. One aide has completed a state-sponsored workshop on legal research. There is no evidence that any other aides have received training in legal research.

8. Generally, there are no problems resulting from noise or overcrowding in the library. There is no evidence as to whether the library would be overburdened if PPLC is closed.

9. The library is located away from inmate cells. Generally, inmates must apply to their cell block officer for a pass to obtain access to the library.

10. Inmates housed in the Classification Center must obtain a pass from the librarian to obtain access to the library.

11. There is no evidence of a system whereby inmates who wish to confer concerning legal problems can gain access to the library at the same time. There is no regulation prohibiting inmates who wish to confer concerning legal problems from attempting to obtain library passes for the same time. There is evidence that passes are not always honored. As a practical matter, it is difficult for inmates to arrange to meet in the library to confer about legal problems.

12. Inmates placed in administrative of disciplinary custody are housed in the Restricted Housing Unit ("RHU") or in E Gallery. There are approximately forty inmates housed in RHU and approximately 120 inmates housed in E Gallery. These inmates are not authorized to leave their housing units and are unable to obtain passes for the library.

13. Inmates on RHU or E Gallery may submit a request slip for a case or book, or legal topic they wish to have researched. Aides perform requested research. One or two days after receiving a request slip, the library will provide three or four books or cases.

14. The library provides a pencil and few sheets of paper upon request.

15. The library contains no Spanish-language legal reference materials.

16. Graterford inmates take placement tests in reading, spelling and arithmetic. A study completed several years ago found that Graterford inmates scored at the 7.3 grade level on these tests. A more recent study found that the average reading level was at the 6.4 grade level.

17. A report completed several years ago estimated that approximately 23% of Graterford inmates read at a "pre-functional" level. The Director of Treatment estimates that 300 to 325 Graterford inmates are functionally illiterate.

18. A handbook produced by the inmate-run Prison Literacy Project states that the Graterford education

department estimates that 1400 of 2400 Graterford inmates are functionally illiterate.

19. A Clinic member estimated that, in 1978, 30 to 50% of Graterford inmates were functionally illiterate.

20. Approximately one-third of the 168 Hispanic inmates at Graterford can understand, read and write English. Spanish-speaking inmates who cannot read or write English need assistance to utilize library materials.

21. Graterford offers a variety of educational programs, including an adult basic education program leading to a high school equivalency diploma, a computer literacy course, and a tutoring program in English as a second language.

22. Prison counselors are available to help illiterate inmates contact attorneys and courts. A Spanish-speaking counselor is available

to assist Hispanic inmates. Counselors are not qualified to give legal advice to inmates.

23. PPLC is a non-profit corporation formed under Pennsylvania law for the purpose of providing legal services to Graterford inmates.

24. PPLC presently maintains an office on each cell block, i.e., cell blocks A, B, C, D and E. The Clinic also has an office off the main corridor ("main office") which is approximately as large as two cells and an office/library of approximately 700 square feet located in the prison school building.

25. Inmates do not need a pass to visit the Clinic office on their cell block. Inmates have access to the Clinic office on their cell block at any time the office is open.

26. Clinic cell block offices are open from 8:00 a.m. to 11:20 a.m., 1:00 p.m. to 3:20 p.m., and 6:00 p.m. to 8:45 p.m.

27. The Clinic's main office and office/library are accessible on a limited basis to blocks A, B, C and D inmates.

28. The Clinic office on cell block E provides legal assistance to inmates in administrative and disciplinary custody. Clinic members obtain special passes to enter cell block E.

29. Clinic members perform legal services for other Graterford inmates. There are approximately sixteen to twenty Clinic members.

30. Clinic members represent inmates in Post-Conviction Hearing Act cases, motions for new trial, direct appeals, motions in arrest of judgment,

habeas corpus petitions, civil rights actions, misconduct hearings and other actions affecting inmates welfare. Clinic members also help inmates' prepare letters to courts and outside counsel, and explain communications to inmates from courts and outside counsel.

31. In 1984 PPLC produced 172 notices of appeal, 984 writs, motions and petitions, 78 letters to judges, 191 letters to attorneys, 113 letters to clerks of court, and 90 miscellaneous letters.

32. Clinic members often work in excess of twelve hours per day on behalf of inmates.

33. On numerous occasions, Clinic members have provided both adequate and successful legal representation for Graterford inmates.

34. In 1978, a Clinic member testified that 80% of the clients he serviced over a four year period were unable to read and comprehend legal reference materials.

35. Within a six month period, all of the Hispanics unable to understand English are referred at one time or another to the Clinic.

36. PPLC by-laws prohibit members from receiving compensation from inmates for services rendered. Graterford pays between $520 and $820 per month in salary to members of the Clinic.

37. PPLC services many inmates unable to obtain court appointed counsel. Inmates are generally unable to obtain court appointed counsel to ascertain whether they have claims upon which relief can be granted.

38. By representing inmates at very low compensation from Graterford and

without fee from inmates, the Clinic enables courts to avoid incurring the expense of appointing counsel in many cases.

39. Prison regulations do not permit more than one client inside a cell block office at any one time. Therefore, the cell block offices provide private areas conducive to confidential legal communications.

40. PPLC's main office may be used for confidential legal discussions.

41. PPLC's office/library in the school building does not afford the privacy necessary for confidential legal discussions.

42. Up to five pairs of inmates can hold confidential legal discussions in the law library. In addition, several pairs of inmates could hold confidential legal discussions in the general library.

43. Prisoners may do legal work in their cells. However, prisoners are not permitted inside another inmate's cell. Therefore, inmate cells may not be used for confidential legal discussions.

44. Although inmates are not prohibited from assisting each other in legal matters, due to the noise level and traffic interruptions, the block recreation facilities are unsuitable for confidential legal discussions.

45. If the Clinic is closed and members are assigned to other full time jobs, it is unlikely that they will have the time or the energy to perform legal services for other inmates.

46. There are approximately 25 to 30 well known jailhouse lawyers who are not Clinic members.

47. There is no evidence of a system, other than the Clinic, whereby inmates who require legal assistance and

inmates who are willing and able to provide legal assistance can officially make their presence known to one another.

48. Other than the library and research aides, Graterford provides no legal services or assistance to inmates.

49. Graterford's inmate capacity is 2100. At the time of the final hearing, Graterford's inmate population exceeded 2500.

50. Prison overcrowding has led to double celling. Double celling presents security concerns and administrative problems.

51. Due to prison overcrowding, an area off the main corridor has been converted into a dormitory.

52. A number of cells are presently used for storage.

53. PPLC's main office and office/library are not suitable for housing inmates. Closing all PPLC block offices would provide housing space for 5 to 10 inmates.

54. Increased inmate population has led to increased inmate movement through the institution and difficulty in monitoring such movement. Contraband is passed from one cell block to another as inmates travel through the main corridor.

55. Clinic members add to general inmate movement by travelling to various Clinic offices. There is no evidence that PPLC members have abused their privileges to move within the prison.

56. Due to space limitations, the prison cannot adequately store and safeguard inmate property.

57. If the Clinic is closed, the prison intends to use PPLC's main office as a storage area for inmate property.

Discussion

At the time I issued the preliminary injunction, Graterford's library did not contain current volumes of United States Supreme Court Reports, Federal Reporter, Atlantic Reporter, or copies of §§2254 and 2255 of Title 28 of the United States Code (and annotations thereto), the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, and various other indispensable legal research material. I had no difficulty finding that the library was inadequate to preserve inmates' constitutional rights. Wade, 448 F.Supp. at 684. The library has been substantially upgraded and is no longer constitutionally inadequate because of a lack of legal material.

However, the right at issue is not the right to an adequate law library, but rather the "fundamental constitutional right of access to the courts." Bounds v. Smith, 430 U.S. 817, 828 (1977). "The central question in evaluating whether a law library adequately provides meaningful access to the courts is whether the facility will enable the prisoners to fairly present their complaints to a district court." Cody v. Hillard, 559 F.Supp. 1025, 1060 (D.S.D. 1984) (quoting Cruz v. Hauck, 627 F.2d 710, 720 (5th Cir. 1980)). As the library is unavailable to prisoners in administrative or disciplinary custody, and is useless to those who are functionally illiterate, the library, by itself, is totally ineffectual to preserve the fundamental right of access to the courts of these prisoners.

A. Inmates in Administrative and Disciplinary Custody

Prison regulations deny physical access to the library to the approximately 160 inmates in administrative or disciplinary custody. The prison's program of providing a small number of cases or books upon request does not satisfy the constitutional obligations set forth in Bounds.

Legitimate security considerations may justify restrictions on direct access to the library. See Campbell v. Miller, 787 F.2d 217 (7th Cir.), cert. denied, 107 S.Ct. 673 (1986). However, "[s]imply providing a prisoner with books in his cell, if he requests them, gives the prisoner no meaningful chance to explore the legal remedies he might

have." Williams v. Leeke, 584 F.2d 1336, 1339 (4th Cir. 1978) (Haynsworth, C.J.), cert. denied, 442 U.S. 911 (1979). Accord, Cruz, supra; Canterino v. Wilson, 562 F.Supp. 106, 110 (W.D. Ky. 1983). This is so for several reasons. First, it is simply "unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult." Williams, 584 F.2d at 1339. Second, prison "[r]estrictions on the amount of legal material [] ... limit[s] the usefulness of research outside the library." Cepulonis v. Fair, 732 F.2d 1, 4-5 (1st Cir. 1984). Legal research often involves a painstaking study of a series of cases. Bounds suggested that, before filing a pleading, a prisoner would have to research "jurisdiction, venue, standing, exhaustion of remedies, proper parties plaintiff and defendant and

types of relief available," as well as substantive law. Bounds, 430 U.S. at 825. Every judge and lawyer knows that, as a practical matter, it would be impossible to research adequately an action when access is limited to three or four books produced on one or two days notice.

There is no evidence that other prisoners may only use three or four law books at one time. Thus, the prison regulations violate Graterford's duty to insure that the "opportunity to do legal research [afforded those in administrative or disciplinary custody] must be at least the equivalent of the opportunity that is available to an inmate who is permitted to go personally to the prison law library." Wojtczak v. Cuyler, 480 F.Supp. 1288, 1301 (E.D. Pa. 1979). See also Smith v. Bounds, 610 F.Supp. 597, 602 (E.D.N.C. 1985)

(inmates confined to disciplinary segregation must have the same access to law library as other inmates). These restrictions are not alleviated by the existence of jailhouse lawyers, or the assistance of research aides or prison counselors. There is no evidence that inmates in administrative or disciplinary segregation have access to jailhouse lawyers. Assuming arguendo that these inmates could meet with jailhouse lawyers, there is no area in which they could engage in confidential legal discussions. Finally, there is no evidence that self-appointed jailhouse attorneys provide adequate legal assistance.

Only one of the legal research aides has completed a course in legal research. As untrained legal research staff is insufficient to safeguard inmates' rights of access to the

courts. Although prison counselors may contact courts or attorneys on an inmate's behalf, they are not trained to do legal research or writing. Thus, they cannot compensate for a lack of access to the library.

There is no allegation or evidence that the legal research and services provided by Clinic members to inmates in administrative or disciplinary custody is inadequate. In the absence of other prison programs, eliminating the Clinic would leave those in administrative or disciplinary custody with inadequate access to the library and the courts, in violation of these inmates' fundamental constitutional rights.

B. Functionally Illiterate Inmates

Courts have consistently held that the mere provision of an adequate law library does not necessarily satisfy the constitutional obligation set forth in

Bounds. An adequate law library, by itself, cannot provide meaningful access to the courts for those inmates unable to read and understand library materials. See, e.g., Cruz, 627 F.2d 710, 721 ("Library books, even if 'adequate' in number, cannot provide access to the courts for those persons who do not speak English or who are illiterate"); Cody, 599 F.Supp. at 1061 ("a law library, without more, is not sufficient to enable prison inmates ... unschooled in the basics of legal writing to prepare a petition or complaint") (citation omitted); Glover v. Johnson, 478 F.Supp. 1075, 1096 (E.D. Mich. 1979) (an adequate library "cannot provide meaningful aid to a prisoner unschooled in the most basic techniques of legal research "); Canterino, 562 F.Supp. at 108-112

(mere access to an adequate legal library is unavailing to prisoners lacking sufficient intellectual ability to use the facility).[2]

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[2]As one court pointedly observed:

> [A]ccess to the fullest law library anywhere is a useless and meaningless gesture [for] the great mass of prisoners .... To expect untrained laymen to work with extremely unfamiliar books, whose content they cannot understand, may be worthy of Lewis Carroll, but hardly satisfies the substance of the constitutional duty.
>
> Access to full law libraries makes about as much sense as furnishing medical services through books like: "Brain Surgery Self-Taught" ... along with scalpels, drills, hemostats, sponges and sutures.

Falzerano v. Collier, 535 F.Supp. 800, 803 (D.N.J. 1982).

Defendants' contention that "law libraries alone will adequately satisfy the right to access to the courts' rests upon passages in Bounds stating that prisons must provide "prisoners with adequate law libraries or adequate assistance from persons trained in the law," Bounds, 430 U.S. at 828 (emphasis added) and that "adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts." Id. at 830. Bounds reviewed a case decided on summary judgment, without the benefit of an evidentiary hearing. Thus, although the Supreme Court rejected the argument that inmates in general are "ill equipped to use" law libraries, id. at 826, there is no indication that the Bounds record included evidence regarding inmate illiteracy. See also Smith v. Bounds, 538 F.2d 541 (4th Cir. 1975) (no

discussion of inmate illiteracy).[3] DuPont v. Saunders, 800 F.2d 8 (1st Cir. 1986) and Cepulonis v. Fair, supra, relied upon by defendants, do not address the question of whether an adequate law library provides functionally illiterate inmates with meaningful access to the courts. Similarly, in Campbell, supra, there was no allegation that the appellant lacked the capacity to utilize the prison's law library.

In Hooks v. Wainwright, 536 F.Supp. 1330 (M.D. Fla. 1982), the court found

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[3]In a later proceeding, the court found that the illiteracy rate of North Carolina inmates was extremely high. Smith v. Bounds, 610 F.Supp. 597, 604 (E.D.N.C. 1985). This was one of several factors that led the court to find that defendants' library system did not provide adequate access to the courts. Senior District Judge Dupree ordered defendants to provide inmates with assistance of counsel.

that more than fifty percent of Florida's inmate population was functionally illiterate. Senior District Judge Scott concluded that no plan utilizing libaries (sic) alone could assure meaningful access to the courts, and ordered defendants to provide "assistance of counsel, in some form." Id. at 1349. The Eleventh Circuit reversed, declaring that Bounds does not require states to provide legal counsel to inmates. Hooks v. Wainwright, 775 F.2d 1433 (11th Cir. 1985). However, the appellate court recognized that providing inmates "access to libraries in prison, or access to people who have access to libraries," as I do here, is "a far cry from constitutionally requiring the state to provide legal counsel for the imprisoned." Id. at 1437. Thus, Hooks does not stand for the proposition that an adequate law

library provides functionally illiterate inmates with meaningful access to the courts. It merely does not, as I do not here, require counsel as the only meaningful alternative.

It is difficult to determine the precise number of illiterate or functionally illiterate prisoners at Graterford. Evidence was presented on the number of illiterates, the number of functional illiterates, the percentage of prisoners who read at a "pre-functional" level, and the percentage of Clinic clients unable to comprehend legal materials. In most cases the operative terms remained undefined. For purposes of the constitutional right of access to the courts, functional literacy should not be measured in terms of a particular reading level. Rather, functional literacy, for these purposes, means that

an inmate can, "with reasonable adequacy," fairly present his complaint to the courts. Johnson v. Avery, 393 U.S. 483, 489 (1969). See also Cruz, 627 F.2d at 720. Surely, all those considered illiterate or who read at a "pre-functional" level are unable to present fairly a complaint or petition to the courts without assistance. Similarily, Spanish-speaking inmates who cannot read or write English are unable to present, with reasonable adequacy, complaints to the courts without assistance. The evidence establishes that a substantial percentage of Graterford inmates are not functionally literate. This evidence merely confirms the Third Circuit's commonsense observation "of the fact that many prisoners are unable to prepare legal materials and file suits without

assistance." Rhodes v. Robinson, 612 F.2d 766, 769 (3d Cir. 1979) (Seitz, C.J.).

It is also difficult to determine accurately the percentage of PPLC work done on behalf of functionally illiterate inmates. A Clinic executive was unable to estimate this figure at the March 1985 hearing. In 1978, a PPLC member testified that 80% of his clients were not functionally literate. Within any particular six month period, all the Hispanics who cannot read and understand English are referred to PPLC. The evidence establishes that a substantial percentage of PPLC's work is done for inmates who are not functionally literate.

The legal research aides and educational programs Graterford provides are insufficient to insure that functionally illiterate inmates have

meaningful access to the courts. The library staff includes only one trained research aide, and although all aides are supposed to be in the library during working hours, typically at least half the aides are not present. In addition, it appears that only rarely is a Spanish-speaking aide present. Finally, aides are prohibited from providing legal advice to inmates during working hours.[4]

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[4]For these reasons, the instant case is distinguishable from Lindquist v. Idaho State Board of Corrections, 776 F.2d 851 (9th Cir. 1985). In Lindquist, inmate law clerks received training in legal research and writing skills. The clerks viewed two 45 minute video cassette tapes and completed a training program led by an attorney. The court took judicial notice of the fact that the clerks "do an excellent job". Id. at 857. In addition, it does not appear that the clerks in Lindquist were prohibited from giving legal advice or writing assistance to inmates.

The prison is to be commended for providing a variety of educational programs. However, effectively denying a functionally illiterate inmate meaningful access to the courts until he completes a remedial education program is simply not acceptable. Finally, although inmates are not prohibited from conferring with non-Clinic jailhouse lawyers, there is no evidence regarding the competency of jailhouse lawyers or the ease of meeting and holding confidential legal discussions with them. Although I specifically ordered the presentation of evidence regarding the existence of a system whereby inmates who require legal assistance and inmates who are willing and able to provide legal assistance can officially make their presence known to one another, defendants presented no evidence of any such system. Thus,

there is no evidence that, if PPLC is closed, functionally illiterate inmates will have "alternative and readily available means of obtaining assistance of at least equal caliber." Bryan v. Werner, 516 F.2d 233, 237 (3d Cir. 1975). Relying on the prison grapevine to identify jailhouse lawyers is not sufficient to protect prisoners' constitutional rights. For this reason, the rights of functionally illiterate prisoners would be violated if PPLC is eliminated.

C. Security Concerns

Defendants presented evidence that PPLC's use of seven different areas exacerbates security and space problems in the prison. Generally, courts should afford great deference to prison officials in matters concerning the

security and administration of prisons. However, prison officials may not restrict the scope of inmates' constitutional rights by making automatic and conclusory assertions of discipline and security in the support of restrictive policies. Cleavinger v. Saxner, 106 S.Ct. 496, 504 (1985).

The link between problems caused by overcrowding and PPLC's use of prison space is tenuous at best. Graterford's population exceeds capacity by some 400 inmates. I do not underestimate the serious problems this causes prison administrators. However, the main office and office/library are not suitable for housing inmates. The office on E block provides the only space to hold confidential legal discussions for those in administrative or disciplinary custody. Closing the

clinic offices on blocks A, B, C and D would provide housing for between 4 and 8 prisoners. However, the constitutional rights of inmates are not to be impaired because the State fails in its duty to provide adequate housing. Thus, the lack of adequate prison housing does not present a justification for closing PPLC.

Defendants presented evidence that the increase in traffic along the main corridor presents security concerns and that Clinic members travel to Clinic offices via the main corridor. With a prison population in excess of 2,500, I reject the notion that the sixteen to twenty Clinic members add significantly to the amount of traffic in the main corridor. Graterford's superintendent testified that even if the preliminary injunction is lifted, he would not close the PPLC's office/library. If the cell

block offices are closed, then the only remaining places inmates could hold confidential legal discussions with a Clinic member would be in the library, general library, or PPLC's main office. Inmates necessarily use the main corridor to reach any of these places. Thus, closing the block offices, while keeping the main office open, would result in increased inmate movement in the main corridor.

Finally, the prison lacks adequate space to store and safeguard inmate property. Defendants would like to use PPLC's main office as a storage area. Although inadequate storage space is not an insignificant problem, it cannot justify restriction of the fundamental constitutional right of access to the courts. For these reasons, security and space concerns do not justify the closing of any of PPLC's offices.

D. Relief

The final issue to be addressed is whether closing any of the PPLC's offices will violate inmates' fundamental constitutional right of access to the courts. Defendants have represented that, even if the injunction is lifted, they have no plans to shut down the cell block E office or the office/library. However, defendants would eliminate the offices on cell blocks A, B, C and D and the main office. Evidence at the initial hearing established that closing the block offices would overburden the main office. There is no evidence that PPLC could provide adequate services without the use of its main office or that "reasonable alternatives for obtaining assistance" would be available. Bryan, 516 F.2d at 237.

Defendants have not questioned whether plaintiffs have suffered an actual injury, or an "instance in which an inmate was actually denied access to the courts." Hudson v. Robinson, 678 F.2d 462, 466 (3d Cir. 1982) (quoting Kershner v. Mazurkiewicz, 670 F.2d 440, 444 (3d Cir. 1982)). After the Wade hearing, I found that closing the Clinic "has caused the plaintiffs and those who benefit from the services of Clinic members to suffer irreparable harm." Wade, 448 F. Supp. at 683. There has been no showing that inmates have been denied access to the courts since entry of the preliminary injunction. Assuming that the preliminary injunction served its purpose -- to prevent irreparable injury to plaintiffs pendente lite -- such a showing is impossible.

I refuse to lift the injunction and wait for another inmate to be denied access to the courts. To wait for an inmate with a valid habeas corpus or civil rights claim to be denied access to the courts is intolerable; based on my findings in Wade and above, such an injury is inevitable.

For the foregoing reasons, to allow defendants to close PPLC would violate the prison's "affirmative obligation[] to assure all prisoners meaningful access to the courts." Bounds, 430 U.S. at 824 (emphasis added).

Conclusions of Law

1. This court has jurisdiction over the subject matter and parties in this case.

2. Because the Clinic gives legal advice and provides legal representation to functionally illiterate inmates, and inmates in administrative and disciplinary custody, it has standing to assert the constitutional right of access to the courts of these inmates.

3. Closing the Clinic would violate the constitutional rights of certain Clinic clients, including functionally illiterate clients and those housed in administrative or disciplinary custody, in violation of 42 U.S.C. § 1983.

4. Defendants have failed to provide any justification sufficient to warrant the violations of constitutional rights that would result from closing PPLC.

5. Plaintiffs are entitled to permanent injunctive relief.

/S/Joseph S. Lord, III, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex rel. PARA-PROFESSIONAL LAW CLINIC, et al.	:	CIVIL ACTION
v.	:	
ROBERT P. KANE, et al.	:	NO. 78-538

ORDER

AND NOW, this 25th day of March, 1987, it is ORDERED that judgment is entered in favor of the plaintiffs and against the defendants. Defendants are PERMANENTLY ENJOINED from closing any PPLC office or facility.

BY THE COURT:

/S/ Joseph S. Lord, III, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex rel. PARA-PROFESSIONAL LAW CLINIC, et al. : CIVIL ACTION

v. :

ROBERT P. KANE, et al. : NO. 78-538

ORDER

AND NOW, this 26th day of March, 1987, it is ORDERED that the order entered March 25, 1987 is MODIFIED to read as follows:

AND NOW, this 26th day of March, 1987, it is ORDERED that judgment is entered in favor of plaintiffs and against defendants. Defendants, their successors and their agents, servants or employees are permanently enjoined from closing any PPLC office or facility.

BY THE COURT:

/S/ Joseph S. Lord, III, S.J.